

David J. McGlothlin, Esq. (SBN 026059)
david@southwestlitigation.com

Hyde & Swigart
2633 E. Indian School Road, Ste. 460
Phoenix, AZ 85016
Telephone: (602) 265-3332
Facsimile: (602) 230-4482

Ryan L. McBride, Esq. (SBN 032001)
ryan@kazlg.com

Kazerouni Law Group, APC
2633 E. Indian School Road, Ste. 460
Phoenix, AZ 85016
Telephone: (800) 400-6808
Facsimile: (800) 520-5523

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

**Bridget Ann Kaus AKA Bridget
Ann Dunn,**

Plaintiff,

v.

**Experian Information Solutions,
Inc. and Capital One Bank USA,
N.A.,**

Defendants.

Case No.:

**COMPLAINT FOR DAMAGES
PURSUANT TO THE FAIR CREDIT
REPORTING ACT, 15 U.S.C. § 1681,
ET SEQ.**

JURY TRIAL DEMANDED

INTRODUCTION

1. The United States Congress has found the banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods

1 undermine the public confidence, which is essential to the continued
2 functioning of the banking system. Congress enacted the Fair Credit
3 Reporting Act, 15 U.S.C. § 1681 *et seq.* (“FCRA”), to insure fair and
4 accurate reporting, promote efficiency in the banking system, and protect
5 consumer privacy. The FCRA seeks to ensure consumer reporting agencies
6 exercise their grave responsibilities with fairness, impartiality, and a respect
7 for the consumer’s right to privacy because consumer reporting agencies
8 have assumed such a vital role in assembling and evaluating consumer credit
9 and other information on consumers. The FCRA also imposes duties on the
10 sources that provide credit information to credit reporting agencies, called
“furnishers.”

- 11 2. BRIDGET ANN KAUS AKA BRIDGET ANN DUNN (“Plaintiff”), by
12 Plaintiff’s attorneys, brings this action to challenge the actions of
13 EXPERIAN INFORMATION SOLUTIONS, INC. (“Experian”) and
14 CAPITAL ONE BANK USA, N.A. (“Capital One”) (or jointly as
15 “Defendants”) with regard to erroneous reports of derogatory and negative
16 credit information made by Defendants to national reporting agencies, and
17 for failure of Defendants to properly investigate, and this conduct caused
18 Plaintiff damages.
- 19 3. Plaintiff makes these allegations on information and belief, with the
20 exception of those allegations that pertain to Plaintiff, or to Plaintiff’s
21 counsel, which Plaintiff alleges on personal knowledge.
- 22 4. While many violations are described below with specificity, this Complaint
23 alleges violations of the statute cited in its entirety.
- 24 5. Unless otherwise stated, all the conduct engaged in by Defendants took
25 place in Arizona.
- 26 6. Any violations by Defendants were knowing, willful, and intentional, and
27 Defendant did not maintain procedures reasonably adapted to avoid any such
28 violation.

1 7. Unless otherwise indicated, the use of Defendants' name in this Complaint
2 includes all agents, employees, officers, members, directors, heirs,
3 successors, assigns, principals, trustees, sureties, subrogees, representatives,
4 and insurers of Defendants' named.

5 JURISDICTION AND VENUE

6
7 8. This Court has federal question jurisdiction because this case arises out of
8 violation of federal law. 15 U.S.C. §1681 *et seq.*; 28 U.S.C. §1331;
9 Jurisdiction arises for Plaintiff's supplemental state claims under 28 U.S.C.
10 § 1367.

11 9. This action arises out of Defendants' violations of the Fair Credit Reporting
12 Act, 15 U.S.C. §§ 1681-1681(x) ("FCRA").

13 10. Venue is proper in the United States District Court for the District of
14 Arizona pursuant to 28 U.S.C. § 1391(b) because Plaintiff is a resident of
15 Maricopa County, the State of Arizona and Defendants are subject to
16 personal jurisdiction in the County of Maricopa, State of Arizona as they
17 conduct business there, and the conduct giving rise to this action occurred in
18 Arizona. 28 U.S.C. § 1391(b)(2).

18 PARTIES

19 11. Plaintiff is a natural person residing in the County of Maricopa, State of
20 Arizona. In addition, Plaintiff is a "consumer" as that term is defined by 15
21 U.S.C. § 1681a(c).

22 12. Defendant Experian is a corporation doing business in the State of Arizona.

23 13. Defendant Capital One is a National Bank doing business in the State of
24 Arizona.

25 14. Defendant Capital One is a furnisher of information as contemplated by 15
26 U.S.C. § 1681s-2(b) that regularly and in the ordinary course of business
27 furnishes information to a consumer credit reporting agency.
28

1 15. Defendant Experian is a national credit reporting agency, doing business in
2 Arizona, with a principal place of business in Ohio.

3 **GENERAL ALLEGATIONS**
4

5 16. At all times relevant, Plaintiff was an individual residing within the State of
6 Arizona.

7 17. At all times relevant, Defendants conducted business in the State of Arizona.

8 18. On or about August 10, 2009, Plaintiff filed for Chapter 13 Bankruptcy in
9 the United States Bankruptcy Court for the District of Arizona. Plaintiff's
10 case was assigned Case Number 2:09-bk-19053-EPB (the "Bankruptcy") in
11 order to obtain a fresh start and rebuild her credit.

12 19. The obligations ("Debt") to each defendant were scheduled in the
13 Bankruptcy and Defendants, the Creditors, received notice of the
14 Bankruptcy.

15 20. On or about October 6, 2014, Plaintiff received a Bankruptcy discharge.

16 21. None of the Defendants filed any proceedings to declare their Debt "non
17 dischargeable" pursuant to 11 U.S.C. § 523 *et seq.*

18 22. Defendants also did not request relief from the "automatic stay" codified at
19 11 U.S.C. §362 *et seq.* while the Plaintiff's Bankruptcy was pending to
20 pursue the Plaintiff on any *personal* liability for any of the underlying Debts.

21 23. Accordingly, the Debt to each defendant was discharged through the
22 Bankruptcy.

23 24. Further, while the automatic stay was in effect during the Bankruptcy, it was
24 illegal for any of the Defendants to report any post-Bankruptcy derogatory
25 collection information.

26 25. Defendants' attempt to collect upon their respective Debt by reporting post-
27 Bankruptcy derogatory information was therefore false or inaccurate and
28 prohibited by the automatic stay or Discharge.

1 26. Plaintiff subsequently learned that each of the named Defendants reported
2 post-Bankruptcy derogatory credit information regarding the obligations on
3 Plaintiff's credit reports, thereby causing erroneous and negative credit
4 information in Plaintiff's credit files.

5 **Capital One Misreported Credit Information**

6 27. In an Experian credit report dated May 8, 2015, Capital One reported the
7 following inaccurate, derogatory information:

- 8
- 9 • Account #517805723308****: Post-bankruptcy information
10 including: Account past due in multiple months after filing
11 Bankruptcy.

12 28. Capital One should not have reported derogatory information on Plaintiff's
13 account after August 10, 2009, because Plaintiff filed for Bankruptcy on
14 August 10, 2009.

15 29. On or about July 28, 2015, Plaintiff disputed Capital One's reported
16 information regarding the Debt pursuant to 15 U.S.C. § 1681i(a)(2) by
17 notifying Experian, in writing, of the incorrect and inaccurate credit
18 information furnished by Capital One.

19 30. Specifically, Plaintiff sent a letter, certified, return receipt, to Experian (the
20 "Experian Dispute Letter"), requesting the above inaccurate and incorrect
21 derogatory information be removed.

22 31. The Experian Dispute Letter further requested that Experian:

- 23
- 24 • Immediately delete this account and the disputed derogatory
25 information from my credit report.
 - 26 • The discharged debt should be reported with an account balance
27 of \$0 with a status of "current".
- 28

- Further, there should be no post-bankruptcy activity reported on this account. The date of last activity on this account should pre-date my bankruptcy filing date, 08/10/2009, since a default on this account occurred no later than the Bankruptcy filing date.
- Any post-bankruptcy derogatory information should be immediately deleted from [Plaintiff's] report.
- If [Experian] do[es] not immediately delete this from [Plaintiff's] credit report, please include a 100-word statement in my credit report of all of the disputed information contained in this letter regarding this account.

32. Upon information and belief, Experian timely notified Capital One of Plaintiff's dispute, but Capital One continued reporting derogatory information.

33. Capital One and Experian were required to conduct a reinvestigation into this specific account on Plaintiff's consumer report pursuant to 15 U.S.C. §1681i.

34. On or about August 27, 2015, Plaintiff received notification from Experian that Capital One and Experian received notice of Plaintiff's dispute pursuant to 15 U.S.C. § 1681i(a)(6), and Defendants verified that the account had been "Updated".

35. Surprisingly, rather than remove all the derogatory information from Plaintiff's report, Capital One and Experian simply left inaccurate information on Plaintiff's report. Specifically, Capital One and Experian reported the following inaccurate, derogatory information:

- Account 517805723308****: Post-bankruptcy information for the following dates: September 2009 (Charge Off); Status: Closed.

1
2 36. Capital One and Experian, upon receipt of Plaintiff's dispute, failed to
3 conduct an investigation with respect to the disputed information as required
4 by 15 U.S.C. § 1681s-2(b)(1)(A).

5 37. Capital One and Experian failed to review all relevant information provided
6 by Plaintiff in the dispute to Experian, as required by and in violation of 15
7 U.S.C. § 1681s-2(b)(1)(B).

8 38. Due to Capital One and Experian's failure to investigate, they each further
9 failed to correct and update Plaintiff's information as required by 15 U.S.C.
10 § 1681s-2(b)(1)(E), thereby causing continued reporting of inaccurate
11 information in violation of 15 U.S.C. § 1681-s(2)(b)(1)(C).

12 39. Plaintiff's continued efforts to correct Capital One and Experian's erroneous
13 and negative reporting of the Debt by communicating Plaintiff's dispute
14 with Capital One and Experian were fruitless.

15 40. Capital One and Experian's continued inaccurate and negative reporting of
16 the Debt in light of its knowledge of the actual error was willful.

17 41. Capital One and Experian's inaccurate and negative reporting damaged
18 Plaintiff's creditworthiness.

19 42. By inaccurately reporting account information relating to the Debt after
20 notice and confirmation of its errors, Capital One and Experian failed to take
21 the appropriate measures as determined in 15 U.S.C. §§ 1681-s(2)(b)(1)(D)
22 and (E).

23 **FIRST CAUSE OF ACTION**

24 **VIOLATION OF THE FAIR CREDIT REPORTING ACT**

25 **15 U.S.C. § 1681 *ET SEQ.* (FCRA)**

26 43. Plaintiff incorporates by reference all of the above paragraphs of this
27 Complaint as though fully stated herein.
28

1 44. The foregoing acts and omissions constitute numerous and multiple willful,
 2 reckless or negligent violations of the FCRA, including but not limited to
 3 each and every one of the above-cited provisions of the FCRA, 15 U.S.C. §
 4 1681.

5 45. As a result of each and every willful violation of the FCRA, Plaintiff is
 6 entitled to actual damages as the Court may allow pursuant to 15 U.S.C. §
 7 1681n(a)(1); statutory damages pursuant to 15 U.S.C. § 1681n(a)(1);
 8 punitive damages as the Court may allow pursuant to 15 U.S.C. §
 9 1681n(a)(2); and reasonable attorney's fees and costs pursuant to 15 U.S.C.
 10 § 1681n(a)(3) from Defendants.

11 46. As a result of each and every negligent noncompliance of the FCRA,
 12 Plaintiff is entitled to actual damages as the Court may allow pursuant to 15
 13 U.S.C. § 1681o(a)(1); and reasonable attorney's fees and costs pursuant to
 14 15 U.S.C. § 1681o(a)(2) from Defendants.

15 **PRAYER FOR RELIEF**

16 Plaintiff respectfully requests the Court grant Plaintiff the following relief
 17 against Defendants:

18 **FIRST CAUSE OF ACTION**

19 **VIOLATION OF THE FAIR CREDIT REPORTING ACT**

20 **15 U.S.C. § 1681 ET SEQ. (FCRA)**

- 21
- 22 • an award of actual damages pursuant to 15 U.S.C. § 1681n(a)(1);
 - 23 • award of statutory damages pursuant to 15 U.S.C. § 1681n(a)(1);
 - 24 • an award of punitive damages as the Court may allow pursuant to 15
 - 25 U.S.C. § 1681n(a)(2);
 - 26 • award of costs of litigation and reasonable attorney's fees, pursuant to 15
 - 27 U.S.C. § 1681n(a)(3), and 15 U.S.C. § 1681(o)(a)(1) against Defendants
 - 28 for each incident of negligent noncompliance of the FCRA; and

- any other relief the Court may deem just and proper.

TRIAL BY JURY

47. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: October 12, 2015

Respectfully submitted,

BY: /s/ DAVID J. MCGLOTHLIN
DAVID J. MCGLOTHLIN, ESQ.
ATTORNEY FOR PLAINTIFF